

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE RODRIGUEZ,
BOP #26664-198,

Plaintiff,

SIX UNKNOWN NAMES AGENTS;
BARACK OBAMA, President of the
United States,

Defendants.

Civil No. 13cv1351 MMA (JMA)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, currently detained at the Immigration and Customs Enforcement Processing Center located in El Paso, Texas, and proceeding pro se, filed an illegible one-page complaint entitled “Civil Rights Action with the Writ of Summons and Complaint” “under 42 U.S.C. § 1983” (ECF No. 1) on June 10, 2013.

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See 28 U.S.C. § 1914(a).*¹ An action may proceed despite a party’s failure to

¹ All parties filing civil actions *on or after May 1, 2013*, must pay an additional administrative fee of \$50. However, the additional \$50 administrative fee is waived if Plaintiff is granted leave to proceed IFP.

1 pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP")
2 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
3 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

4 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
5 commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28
6 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a);
7 *Andrews*, 493 F.3d at 1051.

8 **II. Conclusion and Order**

9 For the reasons set forth above, the Court hereby:

10 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
11 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to 28
12 U.S.C. §§ 1914(a) and 1915(a); and

13 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is
14 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; **or**
15 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust
16 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
17 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
19 with this Court's approved form "Motion and Declaration in Support of Motion to
20 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee
21 or complete and submit the enclosed Motion to Proceed IFP within that time, this action
22 shall remain dismissed without prejudice and without further Order of the Court.

23 **IT IS SO ORDERED.**

24 DATED: June 18, 2013



25
26 Hon. Michael M. Anello
United States District Judge
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